

May 15, 2003

Margaret Egler, Deputy Chief
Consumer & Government Affairs Bureau
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: CG Docket No. 02-386 – *Ex Parte Communication*

Dear Ms. Egler:

Americatel Corporation (“Americatel”)¹ hereby responds to the April 11, 2003 *ex parte* presentation made by AT&T, WorldCom and Sprint (collectively the “Joint Petitioners”) in this proceeding.² In their presentation, the Joint Petitioners urged, *inter alia*, the Federal Communications Commission (“FCC” or “Commission”) to delay consideration of Americatel’s requests³ for mandatory access to Billing Name and Address (“BNA”) information from all local exchange carriers (“LECs”) and for the imposition of a requirement that all carriers exchange customer billing information under specific parameters developed by the industry through the Ordering and Billing Forum (“OBF”). The Joint Petitioners advocated that Americatel’s issues be deferred until sometime after the FCC adopts rules for mandatory minimum Customer Account Record Exchange (“CARE”) standards, which result would meet the immediate needs of the Joint Petitioners, while leaving those carriers that primarily provide dial-around services waiting in the cold for future relief. Americatel opposes this request for

¹ Americatel, a Delaware corporation that is a subsidiary of ENTEL Chile, is a common carrier providing domestic and international telecommunications services. Americatel also operates as an Internet Service Provider (“ISP”). Americatel specializes in serving Hispanic communities throughout the United States, offering presubscribed (1+), dial-around, and prepaid long distance services, as well as private line and other high-speed services to its business customers. The majority of traffic carried by Americatel is dial-around in nature.

² See Letter from Michael F. Del Casino, AT&T, to Marlene Dortch, FCC, dated April 11, 2003 (“*Joint Ex Parte*”).

³ Americatel’s Petition for Declaratory Ruling (filed September 5, 2002); Americatel’s Comments in CG Docket No. 02-386 (filed January 21, 2003); and Americatel’s Reply Comments in CG Docket No. 02-386 (filed February 4, 2003).

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delay for several reasons: (1) the Joint Petitioners have not produced facts that demonstrate why their request for the Commission to adopt mandatory minimum CARE standards is less complex and more easily adopted than is Americatele's request, nor have they provided any other reason why simultaneous consideration of both requests would cause any delay in the resolution of either; (2) it would be blatantly unfair for Americatele's issues to be deferred until after the Joint Petitioners' desires have been satisfied because Americatele filed its petition for declaratory ruling more than two months before the Joint Petitioners filed their request for relief; (3) the lack of customer billing information is causing significant, on-going financial problems for dial-around carriers that threaten the continued availability of the service; and (4) in this environment, the Joint Petitioners' request for delay at the expense of dial-around traffic is anti-competitive.

The *Joint Ex Parte* does not provide any evidence that demonstrates that the Joint Petitioners' request for the Commission to adopt mandatory minimum CARE standards is less complex than that of Americatele for access to the identity of the local carrier serving the end user customer, such that the matters should be considered separately. The Joint Petitioners merely assume that their proposal is simpler than Americatele's. Moreover, the Joint Petitioners' argument is incorrect. It ignores the fact that the Joint Petitioners want more information from other carriers than Americatele wants. The Joint Petitioners informed the FCC that long distance carriers have a need to know: "(i) whether a customer remains on its network, has switched to another local or long distance carrier, or has made significant changes to the account . . . , and (ii) who the customer's local exchange carrier is for the purpose of submitting or requesting customer information."⁴ Americatele's request for information from other carriers could be satisfied in the event that the Commission were to grant only the second portion of the Joint Petitioners' request – access just to the identity of the customer's local carrier.⁵ A request for less information cannot be more complex than another request for the very same information, along with even more information. The Joint Petitioners' argument would support, if anything, Commission consideration of Americatele's request before that of the Joint Petitioners.

Additionally, it appears that it would be no more burdensome for carriers to provide the identity of a customer's carrier, as requested by Americatele, than it would be for those carriers to provide all of the information requested by the Joint Petitioners. As indicated in the *Joint Ex Parte* (at 5), carriers can exchange needed customer information in many ways – "Paper delivered by U.S. Mail or Fax, Cartridge tape, File Transfer Protocol ('FTP'), Network Data Mover ('NDM'), E-mail, [and] Electronic bonding/Electronic communication." It only stands to reason that, if a carrier can transmit

⁴ Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, at 6 (filed November 22, 2002).

⁵ Americatele also has requested a declaratory ruling to require all competitive local exchange carriers (CLECs) to provide BNA service. However, the request for CLECs to be compelled to provide BNA service is not directly related to the minimum CARE standards issue.

data (*e.g.*, the identity of an end user customer's new local carrier) directly to other carriers via fax, e-mail or FTP, the same carrier could easily send the very same information to a central repository for inclusion in a national or regional database, as contemplated by the Ordering and Billing Forum ("OBF").⁶ There simply are no reasons for the Commission to accept the Joint Petitioners' argument that their mandatory minimum CARE standards should step ahead of Americatel's issues because of their relative complexities.

The Joint Petitioners' request for delay for FCC resolution of the dial-around issues in this proceeding is unfair and wrong. Americatel filed its petition for declaratory ruling on September 5, 2003. The Joint Petitioners' filing was not made until late November. Americatel understands that the Commission deferred placing Americatel's petition on public notice until December 2002 because the Commission was aware, presumably from discussions with the Joint Petitioners, that the Joint Petitioners were planning a filing that broached issues that would be related to those previously raised by Americatel and that, in the interest of efficiency, the FCC desired that both requests be placed on public notice together.⁷ Americatel believes that the FCC's actions made sense; these common issues should be decided together. In light of these facts, it would be blatantly unfair for the Commission now to permit the Joint Petitioners to "jump ahead" of Americatel by deferring consideration of Americatel's issues until some unspecified time in the future.

Americatel cannot over-emphasize the importance of prompt resolution of Americatel's petition to the FCC. As Americatel stated in its April 17, 2003 presentation to the Commission, Americatel's unbillable calls for 2001 were equal to a full six percent of its long distance revenues and, during 2002, Americatel's unbillable dial-around calls were worth more than \$6.4 million. (When Americatel is able to send bills for its dial-around calls to its customers, Americatel generally collects more than 91% of those bills.) Moreover, Americatel sees no improvement on this front during 2003. Based on informal discussions with various members of the industry, Americatel understands that other dial-around carriers are also experiencing large volumes of unbillable calls. To the extent that the Commission were to defer consideration of Americatel's issues, Americatel and other dial-around carriers would likely continue to see increases in the number of unbillable calls and further decreases in profitability. Given today's long distance markets with slim margins, and the explosion of long distance calls made from cellular phones, dial-around carriers cannot continue to provide quality services at

⁶ For a more detailed discussion of the industry plans for a National Line Level Database, see the Comments of Intrado, Inc. filed in this proceeding.

⁷ Indeed, it is quite possible that the Joint Petitioners were stimulated to file their own request for relief as a result of Americatel's filing. At a minimum, the Joint Petitioners clearly recognized the substantially overlapping nature of the two requests.

competitive prices that “bypass the costs charged by a presubscribed carrier”⁸ and meet the needs of their investors when a rising proportion of calls cannot even be billed.⁹ No supplier of goods or services can continue to operate when it cannot even bill for its products or services. Unless dial-around carriers receive prompt regulatory relief, those carriers are unlikely to be able to continue to offer dial-around calling without increasing prices to consumers significantly.

The Joint Petitioners—some of the nation’s largest providers of 1+ long distance services—would stand to benefit financially were competition from dial-around carriers to be reduced. While Americatel does not contend that the Joint Petitioners are purposely attempting to reduce their competition by seeking to defer Commission resolution of the dial-around issues in this proceeding, nevertheless, the practical impact of the Joint Petitioners’ request for bifurcation of this proceeding would be to reduce their competition.¹⁰ Therefore, their latest request is anti-competitive and must be rejected by the Commission.

⁸ *Low-Volume Long Distance Users*, Notice of Inquiry, 15 FCC Rcd 6928 (1999) (Separate Statement of Commissioner Powell). Americatel submits that, in the absence of vigorous competition from dial-around carriers, the largest presubscribed carriers would likely offer fewer discount plans from their basic (and generally high) long distance rates. *See* n.10, *infra*.

⁹ Needless to say, to the extent that dial-around carriers cannot determine the identity of their callers because of an inability to gain access to customer billing information, those carriers are also unable to meet the requirements of the Commission and many state Public Utilities Commissions to render bills in a timely fashion. *See, e.g.*, 16 TEX. ADMIN. CODE §§26.25(c) (requiring monthly billing statements) and 27(a)(3)(C) (prohibiting back-billing of charges for services rendered more than six months from the date of the carrier’s discovery of a billing error).

¹⁰ While AT&T, WorldCom and Sprint offer their customers attractive monthly fee-based calling plans, those same carriers have raised their basic long distance prices by an average of 17.5% from 2002 to 2003, according to the latest study from California-based Consumer Action. http://www.consumer-action.org/English/CANews/2002_Longdistance.php#Topic_01 (visited April 28, 2003). Americatel recognizes that the Joint Petitioners also offer dial-around services similar to Americatel’s services that could be harmed were the Joint Petitioners’ request for bifurcation to be granted. However, dial-around calling constitutes but a small portion of the Joint Petitioner’s business (indeed, Sprint’s Form 10-K, filed with the Securities and Exchange Commission on March 7, 2003 does not even mention dial-around traffic), whereas dial-around calling continues to be Americatel’s largest revenue stream.

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It is clear that the Commission made a considered decision to join Americatel's issues with those of the Joint Petitioners for comment in a single public notice. The joined issues are related and should, therefore, be decided at the same time.¹¹

For the above reasons, Americatel urges the Commission to inform the Joint Petitioners that their request to defer consideration of Americatel's issues until after the Joint Petitioners' wants are satisfied will not even be considered by the FCC. Rather, the Commission should promptly decide all of the issues raised in this proceeding.

If you have any questions about Americatel's position on this issue, please do not hesitate to contact me.

Sincerely,

Robert H. Jackson
Counsel for Americatel Corporation

cc: Perlesta Hollings
Alexis Johns
Richard Smith

¹¹ Of course, principles of fundamental fairness would dictate that, in the event that the Commission were to bifurcate the requests for relief, Americatel's request, which predates that of the Joint Petitioners by more than two months, should clearly be decided first.